

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOSE LUIS GUTIERREZ,

Case No. 20-CV-398 (NEB/DTS)

Petitioner,

v.

ORDER ACCEPTING REPORT AND
RECOMMENDATION

JODI HARPSTEAD, *DHS Commissioner*,

Respondent.

The Court has received the January 20, 2023, Report and Recommendation of United States Magistrate Judge David T. Schultz. (ECF No. 33.) No party has objected to that Report and Recommendation, and the Court therefore reviews it for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Finding no clear error, and based upon all the files, records, and proceedings in the above-captioned matter, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation (ECF No. 33) is ACCEPTED.
2. A stay is imposed in this matter pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), until petitioner Jose Luis Gutierrez's state-court appeal in Case No. AP21-9091 has fully concluded. Respondent Jodi Harpstead is directed to provide notice of the conclusion of the state-court proceedings within 14 days of the date that those proceedings have become final.
3. Respondent's motion to dismiss (ECF No. 21) is DENIED WITHOUT PREJUDICE.

4. Petitioner Jose Luis Gutierrez's motion for voluntary dismissal (ECF No. 28) is DENIED WITHOUT PREJUDICE.
5. Gutierrez's motion to take judicial notice (ECF No. 29) is DENIED WITHOUT PREJUDICE.

Dated: February 23, 2023

BY THE COURT:

s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge